

REMARKS

By the foregoing Amendment, Claim 1 is amended. Claims 31-40 have been withdrawn from consideration. Entry of the Amendment, and favorable consideration thereof is earnestly requested.

The Examiner has rejected all claims either under 35 U.S.C. §102(e) as being anticipated by Van Horn et al. (U.S. Patent No. 6,604,089) or under 35 U.S.C. §103(a) as being unpatentable over Van Horn in combination with Egghead (web page of Egghead.com) and/or Geiger (U.S. Patent No. 6,434,536). Applicants respectfully request that the Examiner reconsider these rejections in light of the above Amendments and the below Remarks.

The present invention is directed to a web-based system for liquidating excess, returned, inventory of slow moving products to maximize gross profit. The system has a variable pricing strategy for enabling quick liquidation of unsold or returned inventory items. The pricing strategy is interactive, and includes a flexible current price, an open order mechanism, a facility for a demand price and a buyer auction scheme. Sellers interact with the system to set minimum prices and permitted increments of changes in price when prices vary. Buyers can choose to acquire a certain amount of a product at the current price, or set an amount they are willing to pay after a particular period of time. Sellers can adjust prices based on buyer responses and arrive at an optimal pricing strategy over a given period of

time to meet their requirements for inventory liquidation. The system permits the liquidation of excess or returned inventory in a desired amount of time with an improved recovery price.

Claim 1, the only pending independent claim, has been amended to require, among other limitations: (1) that the system permits a buyer to request an immediate purchase at an immediate purchase price and that a sale is unconditionally consummated at the immediate purchase price as soon as the user requests the immediate purchase at the immediate purchase price; and (2) that the system permits a buyer to request a deferred purchase when a user-defined deferred purchase price matches a decreased immediate purchase price and that a sale is unconditionally consummated at the user defined deferred purchase price as soon as the user-defined deferred purchase price matches the decreased immediate purchase price. This is completely different than what is disclosed in the prior art.

Van Horn discloses a system in which an online buying group (referred to therein as a "co-op") is formed for the specific purpose of purchasing a particular product by defining a start time, end time, critical mass, any minimum number of units offered, any maximum number of units offered, starting price and product cost curve. As data is gathered from buyers, by means of their making binding purchase offers, the co-op is modified using a pricing tool, so as to take into

account this market data in the definition of the price curve. A buyer chooses a product co-op of interest, and the buyer is presented with the following essential co-op information: current price, closing time, next price level (as defined by a price curve visibility window and the price curve) sufficient to entice the buyer to make an offer. Once a buyer has made up his mind, the decision must be made to offer a purchase price which includes the current price, guaranteeing availability if critical mass has been achieved, or to make an offer at a lower price range that can be accepted only if the co-op price drops to that level, which may not occur. Given a decision to make an offer at such lower price, the buyer enters such maximum price at which he is willing to purchase the product. Should the current price drop to the level at which the offer was made, the price contingency is removed from such offer and assuming critical mass is achieved, the offer is accepted at the close of the co-op, and processed accordingly. Inventory is allocated to fulfill the accepted offer following the closing of the co-op.

Thus, while Van Horn discloses that a prospective buyer may request a purchase at a current price, no sale is unconditionally consummated at that time as is required by all claims. Rather, any sale is conditioned upon the co-op achieving critical mass. If the co-op never achieves critical mass (which is a very real possibility), the sale is never consummated. Moreover, no sale is consummated as soon as the user requests the immediate purchase at the

immediate purchase price as is required by all claims. Instead, the sale is consummated only when (and if) the co-op reaches critical mass.

Similarly, while Van Horn discloses that a prospective buyer may request a deferred purchase when a user-defined deferred purchase price matches a decreased immediate purchase price, no sale is unconditionally consummated when the user-defined deferred purchase price matches the decreased immediate purchase price as is required by all claims. Rather, any sale is conditioned upon the co-op achieving critical mass. If the co-op never achieves critical mass (which is a very real possibility), the sale is never consummated even though the user-defined deferred purchase price has matched the decreased immediate purchase price. Moreover, no sale is consummated as soon as the user-defined deferred purchase price matches the decreased immediate purchase price as is required by all claims. Instead, the sale is consummated only when (and if) the co-op reaches critical mass.

Moreover, Applicants respectfully submit that not only does Van Horn not anticipate Claim 1 as amended, but also that modifying Van Horn to arrive at the claimed invention would be nonobvious and, in fact, repugnant to the teachings thereof. Van Horn is specifically concerned with providing a group-purchasing system which aggregates the buying power of a plurality of buyers. As such, Van Horn repeatedly and expressly teaches that achieving critical mass is essential.

As a result thereof, all sales must be conditioned upon the occurrence of this event, and the consummation of such sales must be deferred until this event occurs. Modifying Van Horn to arrive at the system disclosed and claimed in the present invention (all claims of which require that a sale be unconditionally consummated as soon as one of two different price-based events occur) would completely remove the “critical mass” aspect of Van Horn and completely contradict all teachings thereof. Applicants respectfully submit that modifying a reference in a way which is so clearly taught against in the reference itself would not be proper.

Geiger similarly does not disclose, teach or suggest the present invention as claimed. In fact, not only does Geiger not disclose, teach or suggest the above-highlighted elements, but Geiger clearly does not even disclose, teach or suggest a pricing scheme where the immediate purchase price conditionally decreases over time and/or that a customer can request a deferred purchase when a user-defined deferred purchase price matches a decreased immediate purchase price. Rather, Geiger is cited as a secondary reference only for teaching that items may be sold in lots for a lot price.

Similarly, Egghead does not anticipate or render obvious Claim 1 as amended. Egghead discloses two pricing schemes, the first being a standard offer and acceptance scheme where the seller sets a price and the customer purchases

the product at that price, and the second being a standard auction scheme where users bid on items and after a time period the high bidder or bidders "win" the purchase of the product at their bids.

Thus, not only does Egghead not disclose, teach or suggest the above-highlighted elements, but Egghead clearly does not even disclose, teach or suggest a pricing scheme where the immediate purchase price conditionally decreases over time.

For the foregoing reasons, Applicants respectfully submit that all pending claims, namely Claims 1-30, are patentable over the references of record, and earnestly solicit allowance of the same.

Respectfully submitted,



Stanley H. Lieberstein, Registration No. 22,400
Todd M. Oberdick, Registration No. 44,268
ST. ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, Connecticut 06905-5619
(203) 324-6155
Attorneys for Applicants